

### REMARKS

#### **Overview**

Claims 1-10 are pending in this application. Claims 1, 2, 3 and 9 have been amended. The present response is an earnest effort to place all claims in proper form for immediate allowance. Reconsideration and passage to issuance is therefore respectfully requested.

#### **Issues Under 35 U.S.C. § 112**

Claims 1-10 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In particular, the Examiner indicates that in claims 1 and 9 the phrase "configured to form an enclosure is confusing and indefinite because each of the top portion, bottom portion and middle portion as recited in the claims is not connected to each other" (Office Action, page 2, numbered paragraph 2).

To clarify, therefore, claims 1 and 9 have been amended. Claim 1 has been amended to indicate that "the middle portion operatively connected to the top portion and the bottom portion" and claim 9 has also been amended to indicate "the middle portion operatively connected to the top portion and the bottom portion". Therefore, it is respectfully submitted that this rejection has been remedied.

The Examiner also indicates that in claims 3 and 5-8 the phrase "the drink item is a drink box" or "supplies include at least one pencil holder" or "supplies further include a scissor holder" defines the apparatus in reference to a drink item or school supplies which is undefined and has not been positively claimed rendering the claims vague and indefinite because it is not clear what

structure limitations Applicant intends to encompass with such language (Office Action, page 2, numbered paragraph 2).

To further clarify, claim 1 has been adapted to indicate that the at least one drink restraint is "adapted" for holding a drink item and that the at least one stack restraint is "adapted" for holding a snack item. Also, claim 3 has been amended to specifically require "the drink restraint is adapted for holding a drink box." Therefore, it is respectfully submitted that these rejections should be withdrawn.

It is observed with respect to claim 5 that claim 5 already includes the limitations of "the structures adapted for holding school supplies include at least one pencil holder." Thus, it is respectfully submitted that claim 5 does not require further amendment as claim 1 also specifies "structures adapted for holding school supplies" and therefore positively recites the limitation.

With respect to claim 2, claim 2 has been amended to replace "position" with --portion--. Therefore, it is respectfully submitted that this rejection should also be withdrawn.

### Issues Under 35 U.S.C. § 103

Claims 1, 3, and 5-10 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U. S. Patent No. 6,349,820 to Kelley et al. in view of U. S. Patent No. 5,595,302 to Maydwell et al and U. S. Patent No. 4,308,951 to Walker, Jr. This rejection is respectfully traversed.

First, it is observed that contrary to the Examiner's reading of Kelley, Kelley does not disclose "at least one side of the top portion comprising a right-on wipe-off surface." The Examiner does not specifically indicate where in Kelley disclosure is made concerning such a right-on wipe-off surface and a review of Kelley indicates that Kelley does not disclose this

limitation. As Maydwell and Walker, Jr. do not remedy this deficiency, it is respectfully submitted that this rejection to claims 1, 3 and 5-10 must be withdrawn.

It is further observed that Kelley is directed towards a book-shaped device for holding a cuisine-specific collection of herbs and spices and a business method for providing cuisine-specific herbs and spices. Thus, it is not surprising that Kelley makes no disclosure that it includes compartments/restraints for holding drink items or snack items. Claim 1 specifically requires "wherein one side of the bottom portion includes at least one drink restraint adapted for holding a drink item and at least one snack restraint adapted for holding a snack item." Similarly, claim 9 requires "at least one drink restraint for holding a drink item and at least one snack restraint for holding a snack item." The Examiner indicates that the compartments/restraints of Kelley are "capable of holding a drink item and a snack item." Such an observation whether true or not is irrelevant in the context of an obviousness-type rejection as Kelley does not specifically disclose the claimed structures and it is not addressed towards solving the same problem. "The problem solved by the invention is always relevant." In re Wright, 838 F.2d 1216, 6 U.S.P.Q.2d 1959, 1961 (Fed. Cir. 1988). It is respectfully submitted that as Kelley is not directed towards addressing the same problem as in the Applicant's claimed invention, and that the Examiner needs to further consider the relevancy of Kelley. Moreover, it is also respectfully submitted that Kelley is not available under 35 U.S.C. § 103 as it is not within the field of the inventor's endeavor and was not directly pertinent to the particular problem with which the inventor was involved. King Instrument Corp. v. Otari Corp., 767 F.2d 853, 226 U.S.P.Q. 403 (Fed. Cir. 1985). Therefore, these rejections should also be withdrawn for this independent reason as well.

Claim 2 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over the references applied to claim 1 and further in view of U. S. Patent No. 5,950,834 to Woodnorth et

al. The deficiencies with respect to the rejection to claim 1 have already been addressed. Woodnorth does not remedy these deficiencies, therefore this rejection to claim 2 must also be withdrawn.

Claim 4 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over the references as applied to claim 1 and further in view of Official Notice. In particular, the Examiner indicates that it is old and conventional practice to provide a student's backpack for holding lunch and school supplies for a student having straps for carrying the backpack. As claim 4 depends from claim 1, it is respectfully submitted that this rejection to claim 4 should be withdrawn for the reasons previously expressed with respect to claim 1. There is also an independent reason for patentability of claim 4. In particular, as Kelley is not directed towards an apparatus for carrying school supplies or for carrying lunch (but rather a spice holding device), it would not have been obvious to add backpack straps to Kelley as Kelley is not directed towards the same problem addressed by the Applicant's invention. Why would a spice rack have backpack straps? Therefore, it is respectfully submitted that this rejection to claim 4 should also be withdrawn.

### **Conclusion**

Therefore, it is respectfully submitted that all claims are in proper form for immediate allowance and reconsideration and passage to issuance is therefore respectfully requested. Should the Examiner not find all claims in proper form for immediate allowance, the Examiner is encouraged to contact the above undersigned attorney in order to reach mutual agreement as to appropriate claim language in order to expedite prosecution of this case.

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,

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